

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL A. WALLACE,	§
	§ No. 126, 2011
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware, in and
STATE OF DELAWARE,	§ for Sussex County
	§ Cr. ID Nos. 0810014644A
Plaintiff Below-	§ 0810014644B
Appellee.	§

Submitted: June 28, 2011
Decided: August 31, 2011

Before **BERGER, JACOBS**, and **RIDGELY**, Justices

ORDER

This 31st day of August 2011, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Michael Wallace, filed this appeal from the Superior Court's denial of his first motion for postconviction relief. The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Wallace's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Wallace was arrested in October 2008 and later charged with two counts of second degree rape, one count each of continuous sexual abuse of a child and terroristic threatening, forty-eight counts of second degree unlawful sexual contact, and thirty-eight counts of dealing in child pornography. On September 11, 2009, Wallace pled guilty to two counts of second degree unlawful sexual contact, one count of continuous sexual abuse of a child, and two counts of dealing in child pornography. On November 13, 2009, the Superior Court sentenced Wallace to forty-nine years at Level V incarceration, with credit for 391 days served, to be suspended after serving fourteen years in prison and upon successful completion of the Family Problems program for one year at Level IV work release followed by a period of probation. In February 2010, Wallace filed a motion for sentence modification, which the Superior Court denied. Wallace did not appeal.

(3) Thereafter, Wallace filed a motion for postconviction relief in which he raised five issues: (i) the prosecutor breached the plea agreement by asking for the imposition of a sentence in excess of the six year minimum; (ii) the prosecutor engaged in misconduct by making false and misleading statements at the sentencing hearing; (iii) defense counsel was ineffective for failing to allow Wallace to review the presentence

investigation report and for failing to present all of Wallace's evidence in mitigation at sentencing; (iv) the Superior Court erred by sentencing Wallace in excess of the SENTAC guidelines; and (v) the sentence imposed was excessive compared to similar cases. The Superior Court denied Wallace's motion. This appeal followed.

(4) Wallace raises only one issue in his opening brief on appeal.¹ He contends that his trial counsel was ineffective for failing to file a direct appeal from the Superior Court's November 2009 sentencing order. Wallace, however, did not raise this issue in the postconviction motion he filed in the Superior Court. Defense counsel, therefore, had no opportunity to respond to the allegation, and the Superior Court had insufficient opportunity to address this claim in the first instance. Accordingly, this Court will not review such a claim for the first time on appeal unless the interests of justice so require.²

(5) We find that the interests of justice do not require consideration of this claim. It is clear from the guilty plea transcript Wallace understood that, by pleading guilty, he was waiving his right to a trial and an appeal. Wallace acknowledged on the record that the Superior Court could impose

¹ To the extent Wallace failed to brief on appeal any of the claims he raised in his postconviction motion below, those claims are all deemed waived. *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

² Del. Supr. Ct. R. 8 (2011).

up to a sixty-nine year sentence in his case. Wallace stated under oath that no one had promised him what his sentence would be, that he was pleading guilty because he was, in fact, guilty, and that he was completely satisfied with his counsel's representation. Under the circumstances, he is bound by the statements he made under oath.³ Accordingly, there was no basis for counsel to file an appeal.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

³ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).